SHARRATT v. MURTHA Doc. 24

UNITED STATES DISTRICT COURT FOR THE WESTERN DISTRICT OF PENNSYLVANIA

JUSTIN SHARRATT)	
1348 Lucia Drive)	
Canonsburg, Pennsylvania 15317)	
DI : .: CC)	
Plaintiff,)	
)	Civil Action No. $3:08 - cv - 229$
VS.)	
)	PLAINTIFF'S ANSWER TO
JOHN MURTHA,)	GOVERNMENT'S MOTION TO
in his individual capacity,)	SUBSTITUTE THE UNITED STATES
2238 Woodcrest Drive)	AS A DEFENDANT FOR JOHN
Johnstown, Pennsylvania 15905)	MURTHA
)	
Defendant.)	

ANSWER.

AND NOW COMES the Plaintiff, Justin Sharratt, by and through his attorney, Noah Geary, Esquire, and respectfully requests this Honorable Court to follow the dictates of Pennsylvania law and to therefore **DENY** the Government's Motion to Substitute the United States as a Defendant for John Murtha, and in support, responds as follows:

- Sharratt's Complaint, unlike the facially-deficient Wuterich Complaint filed in the D.C.
 Circuit, clearly pleads sufficient facts that, if true, would establish that John Murtha, under
 Pennsylvania law, acted outside the scope of his employment when he repeatedly slandered
 Sharratt and violated his Constitutional Rights.
- 2. Pennsylvania law clearly states that the issue of whether or not Murtha acted outside or within the scope of his employment is for a **jury** to decide at trial, not for a Judge to decide on a pre-trial Motion.

3. Pennsylvania respondeat superior law governs this scope of employment issue for three

reasons: (i) both Sharratt and Murtha reside in the Western District of Pennsylvania; (ii) Murtha

made his slanderous statements while in the Western District of Pennsylvania; and (iii) because

Murtha's repeated slanderous statements about Sharratt were printed and broadcast repeatedly

throughout the Western District of Pennsylvania.

4. Because this Court is required to (1) accept Sharratt's factual allegations as true, and (2)

construe the Complaint liberally in his favor, Sharratt's Amended Complaint satisfies the Notice

pleading standard of Federal Rule of Civil Procedure 8(a).

5. Sharratt can proceed on his Tort of Invasion of Privacy cause of action no matter what

because under Third Circuit case precedent, this cause of action is not exempted from suit under

Section 2680(h) of the Federal Torts Claims Act.

6. Sharratt hereby incorporates by reference into this Answer his Brief in Opposition, which

is filed simultaneously with this Answer.

WHEREFORE, for any and all of the above reasons, and most especially because

Pennsylvania law requires that scope of employment issues be decided by juries, the

Government's Motion must be denied.

Respectfully submitted,

June 19, 2009

/s/ Noah Geary

Noah Geary, Esquire Attorney for Plaintiff

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CERTIFICATE OF SERVICE.

I, Noah Geary, hereby certify that I served the foregoing **Answer** upon Defense Counsel, Paul Werner, Esquire, on this day, via email:

Paul E. Werner, Esquire U.S. Department of Justice 1425 New York Avenue, N.W. Washington, DC 20005 paul.werner@usdoj.gov

Date: June 19, 2009 /s/ Noah Geary

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